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May 2, 2007

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 4, 2006

Case Number: TSO-0386

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor and held a security clearance at the contractor's request. An investigation into the individual's eligibility for a higher level of access authorization uncovered potentially derogatory information. In order to resolve the security concern arising from the investigation, DOE conducted a Personnel Security Interview (PSI) with the individual in December 2005. The PSI did not resolve the concerns and, in January 2006, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist could not make a psychiatric diagnosis but opined that the individual had been and currently is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation.

In February 2006, DOE sent the individual a letter notifying him that his clearance was suspended and informing him how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (March 2, 2006). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (j), (k) and (l) (Criteria J, K and L). The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. §710.8 (j). In this regard, the Notification Letter cites the opinion of the DOE consultant-psychiatrist that the individual has been a user of alcohol habitually to excess without rehabilitation or reformation. The DOE Operations Office invoked Criterion L on the basis of information that the individual has engaged in unusual conduct or is subject to

circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security. In this regard, the Notification Letter stated that: (1) the individual admitted that in 2003 he gained unauthorized access to his roommate's computer, copied a class assignment and submitted it as his own work, and (2) he used marijuana in 2003 despite signing acknowledgments in 1999 and 2002 that drug use was prohibited while holding a clearance. DOE invoked Criterion K on the basis of information that the individual has trafficked in, sold, transferred, possessed, used or experimented with a drug or other controlled substance except as prescribed or administered by a physician or otherwise authorized by Federal law. This is based on the individual's admission that he smoked marijuana in 2003 while holding a DOE access authorization.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his psychiatrist, his therapist and four character witnesses. On February 6, 2007, the individual submitted an affidavit from an expert witness and the record in this case was closed. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents submitted by the individual are cited as "Ind. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct;

the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my decision that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

In 1999, while attending college, the individual was hired by a DOE contractor as a student intern and held an access authorization at the employer's request. In April 1999, he signed a Security Acknowledgment, certifying his understanding that using alcohol habitually to excess and/or any involvement with any illegal drugs could result in the loss of his clearance. Ex. 10. The individual abstained from alcohol until June 2002, when he drank to celebrate his 21st birthday. Tr. at 235-241. He signed another Security Acknowledgment in August 2002 when his clearance was reinstated for another summer position. Ex. 9.

In September 2003, the individual began his senior year at college. He also experienced an emotional breakup with a long-time girlfriend. He then began to go out with his fraternity brothers every weekend, consuming alcohol with them once or twice a week. One month after the breakup, he accessed his roommate's computer and submitted the roommate's work as his own. PSI at 5-8. The teacher confronted the individual about his actions, told him that he had cheated and gave the individual an "F" on the assignment. While on a camping trip with friends that fall he got intoxicated and smoked marijuana. From January 2004 through March 2004, he decreased his consumption of alcohol. However, in April and May 2004, he got intoxicated at six graduation parties. In October 2004, he began working full-time for a DOE contractor. Ex. 11 at 3. In 2005, the individual moderated his drinking to two to four drinks on one or two days a month. Ex. 7 (Report) at 8. In April 2005, his father died after a long illness. In August 2005, the individual completed a Questionnaire for National Security Positions (QNSP) and in response to a question about whether he had used any illegal drugs in the last seven years, answered "no." Ex. 11 at 8. However, in October 2005, a background investigation uncovered information about the individual's marijuana use on the camping trip and also about the plagiarism of the class assignment. Ex. 4. As a result, DOE requested that the individual participate in a PSI which took place in December 2005. Ex. 15. The PSI did not resolve the security concerns, and DOE requested a psychiatric evaluation for the individual. Ex. 3 at 1.

In January 2006, a DOE consultant-psychiatrist (hereinafter "the DOE psychiatrist") interviewed the individual for approximately two hours and completed a report of the interview for the record. Ex. 7 (Report). Based on information gleaned from the interview, the DOE psychiatrist opined that the individual suffered from drinking alcohol habitually to excess from 2003 to 2005.¹ He concluded that the individual was intoxicated 12 times in

¹ According to the DOE psychiatrist, "to excess" is synonymous with intoxication. He defined habitual as "a behavior or action that has been formed or acquired by continual use." Report at 2.

2003, 6 times in 2004 and 12 times in 2005. Report at 9-11. The DOE psychiatrist found that the individual, who continued to drink alcohol, did not present adequate evidence of rehabilitation or reformation from drinking alcohol habitually to excess. Report at 14. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor at least once a week for a minimum of 200 hours in a year and abstain from alcohol for two years; or (2) complete a six-month alcohol treatment program and abstain for three years. *Id.* at 14-15. In order to demonstrate reformation, the DOE psychiatrist recommended that the individual abstain for five years, or abstain for two to three and a half years if he attends one of the two rehabilitation programs described above. *Id.* at 14. The DOE psychiatrist concluded that although drinking to excess was a security concern, it was not an illness or mental condition which causes or may cause a significant defect in his judgment or reliability. *Id.* The DOE psychiatrist further opined that the individual's one time use of marijuana was not an illness and did not meet the criteria for substance abuse because it was not recurring. Report at 15. After reviewing the report of the psychiatric evaluation, DOE suspended the individual's access authorization pending resolution of the security concerns. Ex. 2. In April 2006, the individual signed an agreement with his employer to abstain from alcohol and attend AA once a week. *Ind.* Ex. 16.

B. DOE's Security Concerns

Criterion J describes conditions relating to excessive alcohol use that could raise a security concern because of the intoxicating effect of alcohol. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, a DOE psychiatrist opined that the individual was a user of alcohol habitually to excess. Therefore, DOE's security concerns are valid and the agency properly invoked Criterion J in this case.

Criterion K describes a security concern relating to the use, possession or sale of illegal drugs by the individual. The individual has admitted smoking marijuana one time in the fall of 2003. Illegal drug use may cause an individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. See Attachment to Memorandum from Assistant to the President for National Security Affairs, "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," at ¶ 24 (December 29, 2005) (Revised Adjudicative Guidelines). Also, illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. See, e.g., *Personnel Security Hearing*, 28 DOE ¶ 82,816 (2001); *Personnel Security Hearing*, 28 DOE ¶ 82,756 (2000). The individual's admission of marijuana use is well documented in the record, and validates the charge under Criterion K.

Criterion L sets forth derogatory information regarding unusual conduct or circumstances which question the individual's honesty, reliability or trustworthiness. DOE was in possession of two items of credible adverse information supporting an assessment of questionable judgment and untrustworthiness. First, the individual used marijuana in 2003 after signing documents in 1999 and 2002 certifying that any involvement with illegal drugs could cause him to lose his clearance. Second, as a college senior he gained unauthorized access to his roommate's computer and submitted the roommate's work as his own. When an individual engages in unusual conduct, the agency properly questions his reliability and trustworthiness. The plagiarism and drug use allegations described above create questions about the individual's reliability, his judgment, and whether he can be trusted.² Therefore, DOE's security concerns are valid and the agency properly invoked Criterion L in this case. See Revised Adjudicative Guidelines at ¶ 15, 18.

C. Hearing Testimony

1. The Individual's Psychiatrist

The individual introduced the testimony of a psychiatrist (hereinafter "individual's psychiatrist") who has treated the individual since April 2006. Tr. at 270-271. The individual's psychiatrist has extensive background in the treatment of alcohol issues. Ind. Ex. 1. They have had seven sessions in seven months, with each session lasting from 50 to 80 minutes. In the meetings they discussed dealing with stress and identified issues that trouble the individual. The individual's psychiatrist has concluded that the individual does not have any problem with alcohol and is not at risk of becoming alcohol dependent.

The individual's psychiatrist admits that the individual did experience a period of heavy drinking from August 2003 to December 2003. However, he testified at length about his conclusion that the individual did not drink habitually to excess. The individual drank once in October 2002 on his birthday, but did not drink any alcohol for another 11 months. The psychiatrist is reassured by the individual's actions from January 2004 to the date of the hearing, when he moderated and then stopped drinking. According to the individual's psychiatrist, the individual did not drink long enough to have an alcohol problem. Tr. at 64. The psychiatrist also explained why he had little confidence in the blood alcohol level (BAL) calculations of the DOE psychiatrist. He argued that drinking two to four drinks on two days a month does not rise to the level of intoxication unless the individual consumed all of his drinks at once. *Id.* at 252. The most alcohol that the individual consumed in 2005 was three or four glasses of wine in five and one half hours at Thanksgiving and, according to the individual's psychiatrist, that amount of alcohol is not equivalent to legal intoxication.

² The Statement of Charges in the Notification Letter did not invoke Criterion F or address the fact that the individual deliberately provided false information concerning his marijuana use on his 2005 QNSP when he answered "no" to a question asking if he had used any illegal drug in the last seven years. Ex. 1; Ex. 11 at 8. See 10 C.F.R. § 710.8 (f) (Criterion F). Even though I am prohibited from making a finding on Criterion F, I can consider the individual's lack of candor under Criterion L as it relates directly to honesty, reliability and truthfulness. In this regard, I note the guidance provided in the Revised Adjudicative Guidelines that any failure to provide truthful and candid answers during the security clearance process is of "special interest." See Revised Adjudicative Guidelines at ¶ 15-16.

At the individual's height and weight, if he consumed two drinks every four hours the highest BAL he would register is 0.50, below the legal limit in his state. *Id.* at 253. Even his New Year's Eve consumption of eight drinks in four hours would result in a minimal level of intoxication, according to the individual's psychiatrist. *Id.* at 254. Further, the individual's psychiatrist did not consider the individual's senior year, from fall 2003 to May 2004, to be a disaster as the DOE psychiatrist referred to that period in the individual's life, but only a brief period of excessive drinking by a young college student. *Id.* at 255. By early 2004, the individual's psychiatrist considered his patient reformed and rehabilitated from that period of excessive drinking, and not in need of any form of alcohol treatment. *Id.* As further support for his opinion, the individual's psychiatrist offered a copy of the substance abuse evaluation of a local recovery program. Ind. Ex. 2. The program concluded that the individual exhibited a low probability of having a substance dependence disorder, but had experienced "problematic abusive drinking for a short period of time" two years prior to the evaluation. *Id.*; Tr. at 256.

Like the DOE psychiatrist, the individual's psychiatrist was unable to arrive at any alcohol-related medical or psychiatric diagnosis. The individual's psychiatrist agrees with the DOE psychiatrist that there is no evidence of a mental disorder that could impair his judgment or reliability. *Id.* at 56. According to the individual's psychiatrist, the individual shows consistency, reliability, honesty and good judgment. *Id.* at 78-82. The individual's psychiatrist points to the speed and ease with which the individual stopped drinking to prove that the individual is not in denial. *Id.* at 42. He contends that the father's illness and death stimulated a post-traumatic stressful experience where he relived his brother's death³ and drank to escape the pain and grief associated with that event. *Id.* at 32. The individual's psychiatrist opined that the individual was "rehabilitated from his short-lived bout of excessive drinking," and "fully capable of drinking normally and non-excessively in the future." Ind. Ex. 22 at 4.

2. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing that prior to the two-hour January 2006 psychiatric evaluation he had reviewed the individual's file, including his QNSPs, a background investigation, PSIs and other information. Tr. at 108. The DOE psychiatrist was concerned by some statements that the individual made during their interview. For example, he considered the individual's statement that he "very seldom" drank to intoxication and would use alcohol to excess "probably twice a year" to be "a red flag." *Id.* at 112. The individual also told the DOE psychiatrist that he would definitely continue to drink. *Id.* at 113. Most troubling to the DOE psychiatrist was the individual's statement that he was intoxicated 12 times in 2005.⁴ *Id.* at 116-117. Thus, the psychiatrist concluded that he was drinking alcohol habitually to excess during 2005. *Id.* at 120. The individual admitted that he was intoxicated 12 to 24 times from October to December 2003. *Id.* at 121. In 2004, he was intoxicated approximately eight times, six times at graduation

³ The individual's brother died of a terminal illness at the age of 12 on the individual's first day of high school. Ex. 14 at 5.

⁴ The individual contends that this statement is inaccurate and that his actual alcohol consumption was lower. See Ind. Ex. 14.

parties and once a month in March and April. *Id.* The DOE psychiatrist was also concerned because the individual's father and maternal grandfather were alcoholics, which increased his probability of having a problem with alcohol. *Id.* at 124-125. With a history of alcoholism on both sides of the family, the DOE psychiatrist considered the individual's drinking pattern to be problematic. *Id.* at 125.

Based on the individual's responses during the interview, the DOE psychiatrist opined that the individual was in the "pre-diagnostic" phase of alcohol dependence. *Id.* at 129. The DOE psychiatrist found no mental health issues. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend Alcoholics Anonymous (AA) for 200 hours, obtain a sponsor and abstain from alcohol for two years, or attend a six-month alcohol treatment program and abstain for three years. *Id.* at 134. In order to show reformation, the individual must abstain for five years, or abstain for two to three and one-half years if he attends a rehabilitation program. *Id.*

The DOE psychiatrist was present during the entire hearing and reaffirmed his opinion at the conclusion. *Id.* at 376-380. In fact, by the end of the hearing he was more convinced that the individual was facing alcohol problems in the future because the DOE psychiatrist concluded that the individual did not have anyone in his support network to stop him from drinking. He asserted that the lack of support for abstinence from the individual's mother and girlfriend confirmed his opinion that the individual is in danger of becoming alcohol dependent.

3. The Individual's Therapist

The individual's counselor, a clinical social worker, testified that she did grief counseling with the individual from August 2006 to the date of the hearing. They have had 12 sessions in the four months preceding the hearing, and she expects to see him for six or seven additional sessions. In her opinion, the individual has suffered significant losses in his life for a young person, specifically, the loss of his brother, father, and two close friends.⁵ According to the counselor, at the time of these losses, the individual was not able to cope and this distress caused some of the unusual behavior he displayed over the years, including a period of heavy drinking and the incident of plagiarism. Tr. at 201. The therapist concluded that the individual did not deal with his brother's death properly at the time. His longtime girlfriend was his first close emotional attachment after the death of his brother. The counselor testified that at the time of the breakup, the individual "went back to the timeframe of his brother's death" and handled the breakup in the same way. *Id.* at 223.

The therapist argues that the individual will not develop an alcohol problem because of his maturity and the way that he now accepts responsibility for his actions. *Id.* at 196. She contends that he was in distress when he lied on his QNSP, but that he has demonstrated a lifetime of otherwise responsible behavior. *Id.* at 201. She is convinced that if he faces a stressful situation in the future, he will grieve appropriately and not run away from his problems.

⁵ Two of the individual's close friends were murdered in 1999. Tr. at 351.

4. Other Witnesses

The individual presented four character witnesses at the hearing – his mother, his girlfriend, a childhood friend, and the father of a deceased friend. The individual's mother testified that the individual told her soon after the camping trip that he had smoked marijuana, but indicated that he did not want to do it again. Tr. at 273. He began the application process for his clearance a few months after his father died, and his mother was concerned about applying so soon after the death of his father. She advised him to write that he did not use marijuana, based on the way she understood the questions. However, she also told him to be up front if he doubted the truth of the statement he made on his application regarding marijuana use. *Id.* at 276. She asserted that the individual was upset, confused and exhausted by the interview with the DOE psychiatrist. As evidence of the seriousness the individual applied to the results of the psychiatrist evaluation, his mother recounted how he subsequently attended AA, Al Anon and met with a grief counselor to address the issues that were raised in the psychiatric evaluation. She was not sure when she last saw him drink and never saw him intoxicated while in college. She admitted that her father and husband abused alcohol. *Id.* at 301. When asked how she would respond if the individual began to drink regularly, his mother testified that she would be concerned and encourage him to stop. She would send him to a counselor if he told her that he wanted to resume drinking. As for the lie on his QNSP, she contends that it was a mistake and speculated that perhaps he was tired and was working very hard. *Id.* at 297.

The individual's girlfriend also testified. They have been dating since June 2005. Tr. at 311. She met the individual in June 2003 and commented on the changes she has seen in the individual since then. He is more mature, takes more responsibility, and is a good role model for the children at a summer camp where they both worked. *Id.* at 307-310. He helps to plan non-alcoholic events for college students and in her opinion drinks less than his peers. She first saw him drink alcohol in December 2004. She never saw the individual drink while they were at the camp, and has never seen him intoxicated. He has abstained from alcohol since March 2006, but she has attended parties with him prior to March 2006 where he did not drink. *Id.* at 311, 318-321. She would have no problem if the individual began drinking again, and said that his abstinence is his decision. She is supportive of whatever he wants to do and would only tell him to stop drinking if his drinking affected his daily behavior and relationships. *Id.* at 323.

The individual's third character witness was a friend who has known the individual since they were both 12 years old. *Id.* at 328. He also knew the individual's brother, who passed away when the individual was around 15 years old. The witness stated that the individual did not display a lot of emotion at that time. *Id.* at 330. He testified that the individual did not drink in high school, even though others did. He has only seen him drink a few times, and they got drunk together once. He stated that the individual can have a good time without drinking. *Id.* at 333. He also described him as "very trustworthy." *Id.* He has talked to the individual about the lie on his QNSP, and said that the individual "did not want the computer to judge him." *Id.* at 335. He described the individual's one-time use as an accident, and explained that the individual is very mature now. *Id.* at 336. He

does not think that the individual has a problem with drinking, and maintains that the individual has a good support system. *Id.* at 346-347.

The final character witness was the father of a friend of the individual. *Id.* at 351-355. The individual and the friend played soccer together as youngsters, but the friend was killed 10 years prior to the hearing. This witness also works at the DOE facility. He described the individual as an honest and trustworthy employee and a very mature young man.

5. The Individual

The individual testified about his deceased younger brother, and the sadness he felt at the time of his death. His relationship with his father, never a good one, deteriorated after his brother died. *Tr.* at 234-235. He explained that his father drank every evening and began drinking more heavily after his brother's death. The individual first consumed alcohol while celebrating his 21st birthday in spring 2002. *Id.* at 240-241. He did not drink alcohol again until the fall of 2003, when he entered a self-described "crisis period." *Id.* at 241. Soon after breaking up with his girlfriend of three years, he began to socialize with his fraternity brothers, drinking one or two days of every weekend. *Id.* at 244. One month after the breakup he plagiarized the assignment from his friend, and that friendship was ruined. *Id.* at 245. After an argument with his father in December 2004, he decided to moderate his drinking. *Id.* at 248.

The individual discussed the incident where he lied about his marijuana use on his QNSP. He had a lot of fears about answering questions on the QNSP. *Id.* at 364. He testified that his actions were a mistake, and that he did not disclose his marijuana use because he wanted to explain himself to a person and not just fill out a form. *Id.* at 357. In AA, he has acquired the courage to look at himself, and come to appreciate how he has improved and how he is accountable for his actions. *Id.* at 359. He now views decision-making differently and has new coping skills to deal with problems and situations that make him anxious. *Id.* at 361.

D. Mitigating Evidence

1. Criterion J - Alcohol Use

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, neither psychiatrist made a psychiatric diagnosis of an alcohol-related problem, but the DOE psychiatrist opined that the individual drank alcohol habitually to excess. The individual's psychiatrist denied that the individual had any alcohol problem. After careful review of the record, I agree with the conclusion of the individual's psychiatrist that the individual does not and did not suffer from drinking habitually to excess.

It is true that the individual indulged in a period of heavy drinking, from October 2003 to May 2004. However, this brief period of heavy drinking occurred when he was a college student, and can be attributed to finding a new social outlet with his fraternity brothers after

an emotional breakup with his long-time girlfriend. This is supported by evidence that his drinking decreased substantially when he graduated from college and began to mature and work full-time. Even the DOE psychiatrist admitted that the individual only drank heavily for a short time, and did not drink long enough to develop the necessary criteria for a diagnosis of alcohol dependence. Tr. at 125. He is attending AA at the request of his psychiatrist, who recommended the program for its insight into behavior, and appears to be learning a lot from the sessions. The individual signed a one year recovery agreement with his employer in April 2006. Ind. Ex. 16. In that document he agreed to abstain from drugs and alcohol, attend AA once a week, meet with EAP once a month, and submit to random drug testing.⁶ He maintains a good relationship with his psychiatrist and has agreed to consult him before drinking again. Ind. Ex. 22 at 2; Tr. at 371-372. That professional support outweighs the deficiencies in his social support network observed by the DOE psychiatrist. The individual testified credibly that he stopped drinking when he realized that alcohol was causing problems and that he wanted to spend his time in other, more constructive ways. In my observation of his demeanor and testimony at the hearing, the individual is aware that his family history may make him more vulnerable to an alcohol problem, and has taken responsible steps to make sure that this does not happen. Thus, I conclude that the individual has mitigated the security concerns of his alcohol use.

2. Criterion K - Use of Marijuana

In this case, both psychiatrists agreed that the individual used marijuana one time, and that one time use did not evidence an illness or mental condition, nor did it meet the requirements for substance abuse. There is no evidence that he has used marijuana or any other drug since his first use in 2003. His mother testified that he informed her of the incident soon after it happened, and stated that he had no desire to smoke marijuana in the future. He has demonstrated his intent not to abuse drugs in the future and there is no evidence that he has used drugs other than the 2003 incident. Therefore, based on the above and a review of the record, I find that the individual has mitigated the Criterion K security concerns. See Revised Adjudicative Guidelines at ¶ 26.

3. Criterion L - Unusual Conduct

The individual admits that he submitted a classmate's work as his own in 2003. He also admits using marijuana in 2003 despite signing Security Acknowledgments in 1999 and 2002. The individual's written assurance that he would not use illegal drugs was an important factor in DOE's decision to grant and allow him to retain his security clearance. However, he argues that he has matured and has learned new coping skills from his therapist. As an example of his new ability to deal with loss, he related how he was able to openly grieve at the recent death of a friend. Tr. at 365. His therapist and his psychiatrist attributed his unusual conduct in the past to the stress that the individual experienced after the death of his brother and others that were close to him. The therapist remarked that the individual has suffered an extraordinary amount of loss at a young age. His psychiatrist

⁶ The individual's counsel labeled the exhibit "1 Year Agreement with EAP," but the expiration date of the agreement is blank on the actual form. Ind. Ex. 16.

also noted the individual's honesty, responsibility, and increasing maturity. All of his witnesses considered him to be a mature, trustworthy and reliable person.

The individual was a credible witness who was very honest and straightforward about his past behavior. He was sincerely remorseful of the unusual conduct that led DOE to question his judgment and honesty, and handled himself during this proceeding with remarkable maturity and sensibility. Nonetheless, there is insufficient evidence in the record to mitigate this security concern at this time and I am not persuaded that the conduct will not recur.

In 2003, the individual committed two acts that rightly caused DOE to question his judgment. He made no prompt, good faith effort to correct either act. The individual explained that he accessed his roommate's computer and viewed his work in order to help him complete his own assignment. He told DOE security that "I just ended up turning in [the roommate's] assignment verbatim -- exactly what [the roommate] had done, I turned it in with my name." PSI at 5. The individual went on to state:

And as soon as it happened, I mean, I knew exactly what had happened. And, um, the, the biggest regret there was that I had more to make up with him than I did with the teacher because, I mean it's, it's obvious and I know, it, it was obvious that it was the exact same file, you know, so it was, it was my mistake on, it was my mistake all around.

PSI at 6.

Regrettably, despite being fully aware of what he had just done, the individual made no effort to correct his plagiarism. In fact, he said nothing about the incident until confronted by the professor, who gave him an "F" for the assignment. *Id.* He exercised similarly poor judgment when he used marijuana the same year even though he had certified twice to DOE his understanding that involvement with illegal drugs could result in the loss of his access authorization. He did not come forward with information about his drug use until his background investigation in October 2005, one year prior to the hearing. Thus, he maintained the lie for two years, one year longer than he has comported himself in an honest manner.

After reviewing the evidence in the record, I conclude that he has not mitigated the security concerns arising from his 2003 plagiarism and his 2003 use of drugs after signing a Security Acknowledgment. His therapist and psychiatrist stated that the individual exhibited this unusual conduct because he had not properly grieved the death of his brother. Indeed, every person reacts in their own way to a personal tragedy and I do not minimize the depth of loss that this young man has experienced. However, none of the experts provided a credible explanation of how his unresolved grief manifests as unusual conduct seven years later.⁷ More importantly, they have not persuaded me that DOE can be sure that this unusual conduct will not recur. While I believe his testimony that he intends to be honest with DOE in the future, more time is needed to test the strength of his

⁷ The individual himself testified that he did not lie on his QNSP because of his father's death. Tr. at 357.

resolve. For the reasons stated above, questions remain about his honesty, reliability and trustworthiness.

III. Conclusion

After evaluating the evidence in this case, I find that the individual has mitigated the security concerns of Criteria J and K. 10 C.F.R. § 710.8 (j), (k). However, he has not presented sufficient evidence to mitigate the concerns that caused DOE to invoke Criterion L. Thus, in view of Criterion L and the record before me, I cannot conclude that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: May 2, 2007